

10/608,003

PATENT COOPERATION TREATY

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From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

WRITTEN OPINION

(PCT Rule 66)

To:
ELIZABETH ARWINE
OFFICE OF THE STAFF JUDGE ADVOCATE U.S. ARMY
MEDICAL RESEARCH AND MATERIEL COMMAND
ATT:MCMR-JA
504 SCOTT STREET
FORT DETRICK, MD 21702-5012

| | | |
|--------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Applicant's or agent's file reference CHPPM02-401P | | Date of Mailing (day/month/year) REPLY DUE within 2 months/days from the above date of mailing |
| International application No. PCT/US03/20832 | International filing date (day/month/year) 30 June 2003 (30.06.2003) | Priority date (day/month/year) 28 June 2002 (28.06.2002) |
| International Patent Classification (IPC) or both national classification and IPC IPC(7): B04B 5/02, 9/00 and US Cl.: 494/16, 84 | | |
| Applicant U.S. GOVERNMENT BY THE SECRETARY OF THE ARMY | | |

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☒ Certain defects in the international application
 - VIII ☒ Certain observations on the international application

3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 *bis*.
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 28 October 2004 (28.10.2004).

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230 | Authorized officer Charles E. Cooley Telephone No. (571) 272-1700 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|

9 April 2004

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International application No.

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I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☒ the description:
 pages 1-9, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☒ the claims:
 pages 10-13, as originally filed
 pages NONE, as amended (together with any statement) under Article 19
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☒ the drawings:
 pages 1-6, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages NONE, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.
 These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

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V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

| | | |
|-------------------------------|----------------------------------------------|-----|
| Novelty (N) | Claims <u>3-5, 7-11, 13-18, 20-21, 23-28</u> | YES |
| | Claims <u>1, 2, 6, 12, 19, 22</u> | NO |
| Inventive Step (IS) | Claims <u>3-5, 7-11, 13-18, 20-21, 23-28</u> | YES |
| | Claims <u>1, 2, 6, 12, 19, 22</u> | NO |
| Industrial Applicability (IA) | Claims <u>1-28</u> | YES |
| | Claims <u>NONE</u> | NO |

2. CITATIONS AND EXPLANATIONS

Claims 1, 2, 6, 12, 19, and 22 lack novelty under PCT Article 33(2) as being anticipated by Wetherill (US 780,315).

The patent to Wetherill discloses a device including a centrifuge body a; holder or sling h; tether c3; handle c'; the device being formed in part of aluminum (page 2, lines 107-108); the device increasing centrifugal force on a specimen in the holder h by rotation about an axis (page 2, line 1-15).

Claim 22 lacks novelty under PCT Article 33(2) as being anticipated by Lomb (US 3,233,825).

The patent to Lomb discloses means 4 for holding a specimen 14; means 9 for increasing centrifugal force on the specimen; and means 10 for providing a rotation axis.

Claim 22 lacks novelty under PCT Article 33(2) as being anticipated by Talley (US 3,268,160).

The patent to Talley discloses means 10 for holding a specimen 11; means 24 for increasing centrifugal force on the specimen; and means 23 for providing a rotation axis.

Claim 22 lacks novelty under PCT Article 33(2) as being anticipated by Brimhall et al. (US 4,738,655).

The patent to Brimhall et al. discloses means 26 for holding a specimen 28; means 24 for increasing centrifugal force on the specimen; and means (the member connecting 24 to 26) for providing a rotation axis.

Claims 3-5, 7-11, 13-18, 20-21, and 23-28 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the recited T-bar, cavity to hold the pull handle, brake, spring mechanism, or recited number of apertures.

Claims 1-28 meet the criteria set out in PCT Article 33(4), and thus possess industrial applicability because the subject matter claimed can be made or used in industry such as in the centrifugation of samples.

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VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Claims 25 and 26 are objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof:

Claim 25 depends from itself.

Claim 26 depends from itself.

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VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claim 11 is objected to under PCT Rule 66.2(a)(v) as lacking clarity under PCT Article 6 because it is indefinite for the following reason(s):

Claim 11: "said open back end" lacks antecedent basis. It appears this claim should depend from claim 4.

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.